

MINORITY RIGHTS
IN
KEEWATIN

1912-34

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THE GREAT TEST OF CONSTITUTIONAL FREEDOM—RESPECT
FOR THE RIGHTS OF THE MINORITY.

Sir John A. MacDonald.

The following is a copy of the legal opinion, given by C. H. Cahan, K.C., in respect to the existing rights, of a Protestant or Roman Catholic minority, to establish separate schools in the District of Keewatin, and as to the constitutional authority of Parliament to protect the existing rights by appropriate amendments to the bill No. 115, now before Parliament, for increasing the limits of the Province of Manitoba. Mr. Cahan says:—

There seems to me no doubt as to the validity of the thirteen following propositions, viz:—

1 That the District of Keewatin was included in the North-West Territories by Chapter 49 of the Acts of 1875, which came into force by proclamation on October 7th, 1876 (See Canada Gazette, Vol. X., p. 457); but

2 That, on April 12th, 1876, before said Chapter 49 of the Acts of 1875 came into force, the District of Keewatin was created into a separate District of the North-West Territories by Chapter 21 of the Acts of 1876.

3 That by Chapter 6 of the Acts of 1877, the boundaries of the District of Keewatin were further defined.

4 That by a proclamation of May 7th, 1886 (See Canada Gazette, Vol. XIX., p. 1649) a portion of the District of Keewatin was detached from said District and annexed to the North-West Territories.

5 That by a proclamation of July 20th, 1905 (See Canada Gazette, Vol. XXXIX., p. 371) the remainder of the District of Keewatin was annexed to the North-West Territories from and after September 1st, 1905.

6 That by Chapter 62 of the Revised Statutes 1906 entitled "An Act respecting the North-West Territories," which came into force on January 31st, 1907, all of the former District of Keewatin was, by express enactment, included in the North-West Territories;

and that the laws of and relating to the North-West Territories, not inconsistent with said Act, thereupon applied to the District of Keewatin.

7 That by the same Act, Chapter 62 of the Revised Statutes of Canada, 1906, it was provided as follows:

"2 In this Act, unless the context otherwise requires:—

(a) 'Territories' means the North-West Territories which comprise the Territories formerly known as Rupert's Lands and the North-Western Territory, except such portions thereof as form the Provinces of Manitoba, Saskatchewan and Alberta and the Yukon Territory, together with all British territories and possessions in North America and all islands adjacent thereto, not included within any province, except the colony of Newfoundland and its dependencies."

"3 The Governor-in-Council may appoint for the Territories a chief executive officer to be styled and known as the Commissioner of the North-West Territories."

"6 The Governor-in-Council may from time to time constitute and appoint such and so many persons, not exceeding four in number, as are deemed desirable, to be a Council to aid the Commissioner in the administration of the Territories; and a majority of the Council, including the Commissioner, shall form a quorum."

"7 The Commissioner in Council shall have the same power to make ordinances for the government of the Territories as were on the thirty-first day of August, in the year one thousand nine hundred and five, vested in the Legislative Assembly of the North-West Territories in relation to such subjects then within the legislative authority of the said Assembly as are from time to time designated by the Governor-in-Council."

"10. The Commissioner in Council, if authorized to make ordinances respecting education, shall pass all necessary ordinances in respect thereto; but in the laws or ordinances relating to education it shall always be provided that a majority of the ratepayers of any district or portion of the Territories, or of any less portion or subdivision thereof, by whatever name the same is known, may establish such schools therein as they think fit, and make the necessary assessment and collection of rates therefor; and also that the minority of the ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein and in such case, the ratepayers establishing such Protestant or Roman Catholic separate schools shall be liable only to assessments of such rates as they impose upon themselves in respect thereof."

"13. All laws and ordinances in force in the Territories, and not inconsistent with this Act, or repealed by the operation of the Act passed in the third year of His Majesty's reign, chapter sixty-one, and intituled an Act respecting the Revised Statutes of Canada, shall remain in force until it is otherwise provided or ordered by the Parliament of Canada, or by the Governor in Council, or the Commissioner in Council."

8 That, when the District of Keewatin was attached to the North-West Territories on January 31st, 1907, there was in force, in said Territories, The School Ordinance (Chapter 29 of the Ordinances of 1901) and The School Assessment Ordinance (Chapter 30 of the Ordinances of 1901) including among others the following provisions:—

"41 The minority of the ratepayers in any district whether Protestant or Roman Catholic, may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate school shall be liable only to assessments of such rates as they impose upon themselves in respect thereof." (1901, c. 29, S. 41.)

9 That the said Section 41 of Chapter 29 of the Ordinances of 1901 applied, on and after January 31st, 1907, to the inhabitants of the District of Keewatin.

10 That the rights and privileges of those Districts of the North-West Territories which were, on September 1st, 1905, established as the Provinces of Alberta and Saskatchewan, respectively, were protected by Section 17 of the Alberta Act and by Section 17 of the Saskatchewan Act, which reads as follows:—

“17 Section 93 of the British North America Act, 1867, shall apply to the said province, with the substitution for paragraph (1) of the said section 93, of the following paragraph:—

“1 Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which any class of persons have at the date of the passing of this Act, under the terms of chapters 29 and 30 of the Ordinances of the North-West Territories, passed in the year 1905, or with respect to religious instruction in any public or separate school as provided for in the said ordinances.”

“2 In the appropriation by the Legislature or distribution by the Government of the province of any moneys for the support of schools organized and carried on in accordance with the said chapter 29 or any Act passed in amendment thereof, or in substitution therefor, there shall be no discrimination against schools of any class described in the said chapter 29.”

“3 Where the expression “by law” is employed in paragraph 3 of the said section 93, it shall be held to mean the law as set out in the said chapters 29 and 30, and where the expression “at the Union” is employed, in the said paragraph 3, it shall be held to mean the date at which this Act comes into force.”

11 That in the bill now before Parliament, extending the boundaries of the Province of Manitoba, no similar provision has been inserted to safeguard the rights of the minority of the inhabitants of the District of Keewatin, which district it is now proposed to annex to the Province of Manitoba.

12 That by the British North America Act, 1871, it is provided that:—

“3 The Parliament of Canada may from time to time, with the consent of the Legislature of any province of the said Dominion, increase, diminish, or otherwise alter the limits of such province, upon such terms and conditions as may be agreed to by said Legislature, and may, with the like consent, make provision respecting the effect and operation of any such increase or diminution or alteration of territory in relation to any province affected thereby.”

13 That under the provisions of said recited Imperial Act, the Parliament of Canada may, in providing for increasing the limits of the Province of Manitoba, impose such terms and conditions as it may deem expedient; but that such proposed increase and such proposed terms and conditions can only become and be effective with the consent of the Legislature of said province.

I have seen nothing stated in the recent parliamentary debates which conclusively controverts any of the foregoing thirteen propositions.

The question whether the Parliament of Canada should now insist that, as a condition of the proposed extension of the boundaries of Manitoba, the existing rights and privileges of the inhabitants of that district, with respect to separate schools, should hereafter be maintained, is one of public policy and of political expediency; and not of strict law; but Parliament is now making the law, and every citizen of Canada has a perfect right to express his own conscientious opinion as to the terms of the proposed law.

The Parliament of Canada has frequently affirmed the right of any minority, Protestant or Catholic, to establish and maintain separate schools in any part of the North-West Territories, viz.:—

(1) In 1875, by the North-West Territories Act (Chap. 49 of Acts of 1875).

(2) In 1880, by an Act to amend and consolidate the several acts relating to the North-West Territories (Chap. 25 of the Acts of 1880).

(3) In 1886, by the North-West Territories (Consolidated) Act (Chap. 50 of the Revised Statutes of Canada 1886).

(4) In 1906, by an Act respecting the North-West Territories (Chap. 62 of the Revised Statutes of Canada 1906).

(5) In 1906, by The Yukon Act (Chapter 63 of the Revised Statutes of Canada, 1906).

The public policy, expressed in each of the five recited enactments, was adhered to in Section 17 of the Alberta Act, and in Section 17 of the Saskatchewan Act, when portions of the North-West Territories were created into new provinces in 1905.

Parliament, as a condition of increasing the limits of the Province of Manitoba, is free to insist that the same policy shall have full force and effect in the annexed District of Keewatin; or, in the alternative, that the limits of that province shall not be increased to include the District of Keewatin. Such is the constitutional authority which is now vested in Parliament; but the exercise of that constitutional authority requires the votes of a majority of the members of Parliament.

C. H. CAHAN.

Montreal, March 8th, 1912.

Are Existing Rights Protected

C. H. Cahan, K.C. has given the following further opinion upon the Bill now before Parliament entitled "An Act to provide for the extension of the boundaries of the Province of Manitoba."

I have received your request for my opinion upon the following question, viz.—

"In case the Bill No. 115 is voted in its present form, i.e., without any provision defining and maintaining the rights of minorities in school matters, are those rights maintained by the single fact that previous federal laws, by which those rights were created, are not specifically repealed in the Bill?"

My reply is as follows:—

1 Provisions were made for the admission into the Dominion of Canada of Rupert's Land and the North-West Territory, by Section 146 of British North America Act, 1867, and by the Rupert's Land Act 1868.

2 In Section 4 of The Imperial Act, The British North America Act, 1871, further provision was made that the Parliament of Canada might legislate for any territory not included in a province:—

"4 The Parliament of Canada may from time to time make provision for the administration, peace, order, and good government of any territory not for the time being included in any province."

3 Under the provisions of the recited Imperial Act the Parliament of Canada has legislated with regard to separate schools in the North-West Territories, as follows:—

- (1) In 1875, by the North-West Territories Act (Chap. 49 of Acts of 1875).
- (2) In 1880, by an Act to amend and consolidate the several acts relating to the North-West Territories (Chap. 25 of the Acts of 1880).
- (3) In 1886, by the North-West Territories (Consolidated) Act (Chap. 50 of the Revised Statutes of Canada 1886).
- (4) In 1906, by an Act respecting the North-West Territories (Chap. 62 of the Revised Statutes of Canada 1906).
- (5) In 1906, by The Yukon Act (Chapter 63 of the Revised Statutes of Canada 1906).

4 The Lieutenant-Governor in Council of the North-West Territories has also passed the following Ordinances relating to separate schools and assessments for the support thereof, which have not been repealed, viz.:-

- (1) The School Ordinance (Chap. 29 of the Ordinances of 1901).
- (2) The School Assessment Ordinance (Chap. 30 of the Ordinances of 1901).

5 When and so soon as Bill No. 115, entitled "An Act to provide for the extension of the Boundaries of the Province of Manitoba," comes into force, the Parliament of Canada will cease to have legislative jurisdiction in relation to education, within the territory (the District of Keewatin) added to the Province of Manitoba by the proposed Act.

6 When and so soon as this "Act to provide for the extension of the Boundaries of the Province of Manitoba" comes into force, the Legislature of Manitoba will have exclusive legislative jurisdiction, in relation to education within the territory (the District of Keewatin) added to the Province by the proposed Act, by virtue of Section 22 of The Manitoba Act 1870; which provides as follows:-

"22 In and for the Province (of Manitoba) the said legislature (of Manitoba) may exclusively make laws in relation to, education, subject and according to the following provisions:-

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to Denominational Schools which any class of persons have by law or practice in the province at the Union," that is, at the date of the admission of Manitoba to the Union, in 1870.

7 If it is now desired to safeguard the rights of any present or future minority, with respect to separate schools in the annexed District of Keewatin, the Parliament of Canada, except in the exercise of its contingent right to enact remedial legislation, can do this only by inserting appropriate provisions to that effect in the Bill No. 115, which is now before Parliament.

8 The British North America Act, 1871, provides in Sections 3 and 6, as follows:-

"3 The Parliament of Canada may from time to time, with the consent of the Legislature of any province of the said Dominion, increase, diminish, or otherwise alter the limits of such province, upon such terms and conditions as may be agreed to by the said Legislature, etc."

"6 Except as provided in the third section of this Act, it shall not be competent for the Parliament of Canada to alter the provisions of the last mentioned Act (i.e., The Manitoba Act, 1870) of the said Parliament in so far as it relates to the Province of Manitoba," etc.

9 The Parliament of Canada is, therefore, competent, with the consent of the Legislature of Manitoba, to alter the provisions of The Manitoba Act, 1870, by imposing the terms and conditions, under which Parliament will now agree to extend the boundaries of Manitoba to include therein the District of Keewatin.

10 These terms might be imposed by inserting in Bill No. 115 a section in the following or similar terms:—

Section 22 of The Manitoba Act, 1870, (33 Victoria, Chapter 3,) shall apply to the territory added to the province under the provisions of this Act, with the substitution for paragraph (1) of said Section 22 of the following paragraph:—

1 Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational or separate schools, which any class of persons have, at the date of the passing of this Act, by law or practice in the territory added to the province under the provisions of this Act.

Or by inserting in Bill No. 115 a section in the terms, following, or to the like effect:—

Where the expression "at the Union" is employed in section 22 of the Manitoba Act 1870 (33. Victoria, Chapter 3) it shall be held to mean, in respect of the territory added to the province by this Act, the date at which this Act comes into force.

11 The terms proposed, in the foregoing paragraph, would not become effective, unless the said terms should receive the consent of the Legislature of Manitoba; but, on the other hand, if said terms were imposed by Parliament, then, unless the Legislature of Manitoba should consent to the said terms, the boundaries of Manitoba would not be extended.

12 In my opinion, the amendment to Bill No. 115, above mentioned, would reserve to the minority, whether Protestant or Catholic, in the District of Keewatin, all the rights and privileges with respect to denominational or separate schools, which are expressed in the Act respecting the North-West Territories (Chapter 62 of the Revised Statutes of Canada 1906), and also in The School Ordinance of the North-West Territories (Chapter 29 of the Ordinances of 1901).

13 These laws, which, in my opinion, are now in force in the North-West Territories, including the District of Keewatin, contain

the following significant clauses:—

"41 The minority of the ratepayers in any district, whether Protestant or Roman Catholic, may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic, separate school shall be liable only to assessments of such rates as they impose upon themselves in respect thereof." (Ordinances of North-West Territories, 1901, C. 29, S. 41.)

"10 The Commissioner in Council, if authorized to make ordinances respecting education, shall pass all necessary ordinances in respect thereto; but in the laws or ordinances relating to education it shall always be provided that a majority of the ratepayers of any district or portion of the Territories, or of any less portion or subdivision thereof, by whatever name the same is known, may establish such schools therein as they think fit, and make the necessary assessment and collection of rates therefor; and also that the minority of the ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein, and in such case, the ratepayers establishing such Protestant or Roman Catholic separate schools shall be liable only to assessments of such rates as they impose upon themselves in respect thereof." (Chapter 62 R. S. Canada, Section 10.)

"11 If the Bill No. 115, is enacted in its present form, the Legislature of Manitoba will have exclusive jurisdiction to legislate with respect to education in the annexed District of Keewatin, saving the rights and privileges of the minority as they existed, in 1870, when Manitoba entered the Union,—when, as a matter of fact, no such rights or privileges existed in respect of that District, which was then unorganized; but if the proposed amendment is enacted, the rights and privileges of the minority, as they exist in the District of Keewatin, to-day, will be protected; and it will be *ultra vires* of the Legislature of Manitoba to enact any legislation which shall prejudicially affect any such rights and privileges now existing.

C. H. CAHAN.

Montreal, March 9th, 1912.